



State of Wisconsin
2005 - 2006 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 448

1 AN ACT ^{Regen} to create 101.148 and 895.07 of the statutes; relating to: contractors
2 notices, claims against certain contractors and suppliers of dwellings, and
3 providing a penalty.

anal: line 3 →

insert and →

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 101.148 of the statutes is created to read:

5 101.148 Contractor notices. (1) DEFINITIONS. In this section:

6 (a) "Consumer" means the owner, tenant, or lessee of a dwelling, or an
7 association or other entity with control over the common areas appurtenant to a
8 dwelling, who contracts with a contractor to construct or remodel a dwelling.

9 (b) "Contractor" means a person who enters into a written or oral contract with
10 a consumer to construct or remodel a dwelling.

(c) "Dwelling" means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. "Dwelling" includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(d) "Remodel" means to alter or reconstruct a ~~structure~~^{dwelling}. "Remodel" does not include maintenance work.

(e) "Supplier" means a person that manufactures or supplies windows or doors for a dwelling.

(2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written contract to construct or remodel a dwelling, or, if the parties enter into an oral contract, as soon as reasonably possible, but before commencing any work to construct or remodel a dwelling, the contractor shall give the consumer a copy of the brochure prepared under s. 895.07 (1³) and a notice worded substantially as follows:

NOTICE CONCERNING CONSTRUCTION

DEFECTS

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against ^a window or door suppliers ^{or manufacturer}. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door suppliers the opportunity to make an offer to repair or pay for the construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier, but failure to accept a reasonable offer may

1 limit your recoverable damages. All parties are bound by applicable warranty
2 provisions.

3 (b) The notice required under par. (a) shall be conspicuous and in writing and
4 may be included within the contract between the contractor and the ~~potential~~
5 ~~claimant~~ consumer

6 SECTION 2. 895.07 of the statutes is created to read:

7 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this
8 section:

9 (a) "Action" means a civil action or an arbitration under ch. 788.

10 (b) "Claim" means a request or demand to remedy a construction defect caused
11 by a contractor or supplier related to the construction or remodeling of a dwelling.

12 (c) "Claimant" means the owner, tenant, or lessee of a dwelling, or an
13 association, such as a condominium association or homeowners association, who has
14 standing to sue a contractor or supplier regarding a construction defect.

15 (d) "Construction defect" in those cases when the contractor or supplier has
16 provided a warranty shall mean the definition of "defect" in the warranty. In all other
17 cases, "construction defect" means a deficiency in the specifications, planning,
18 supervision, construction, or remodeling of a dwelling that results from any of the
19 following:

20 1. Defective material.

21 2. Violation of applicable codes.

22 3. Failure to follow accepted trade standards for workmanlike construction.

23 (e) "Contractor" means a person ~~who~~ ^{that} enters into a written or oral contract with
24 a potential claimant to construct or remodel a dwelling.

(f) “Dwelling” means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(g) “Remodel” means to alter or reconstruct a ~~structure~~^{dwelling}. “Remodel” does not include maintenance work.

(h) “Serve” or “service” means personal service or delivery by certified mail, return receipt requested, to the last-known address of the addressee.

(i) “Supplier” means a person that manufactures or ~~supplies~~^{provides} windows or doors for a dwelling.

(j) “Working day” means any day except Saturday, Sunday, and holidays designated in s. 230.35 (4) (a).

(2) NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than 90 working days before initiating an action against a contractor or supplier ~~under this section~~^{§ 2} the claimant shall serve written notice of claim on the contractor. ~~The notice of claim shall state that the claimant asserts a construction defect claim or claims.~~^{Insert 4-16V} The notice of claim shall describe the claim ~~or claims~~^{or claim} in sufficient detail to explain the nature of the alleged construction defect and the results of the construction defect and shall offer the opportunity to correct the construction defect. The claimant shall include in the notice of claim a description of the alleged construction defect and include a comprehensive description of all evidence that the claimant knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect.

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1 (b) Within 15 working days after the claimant serves notice of claim under par.
2 (a), or within 25 working days if the contractor makes a claim for contribution from
3 a supplier under sub. (8) (a), each contractor that has received the notice of claim
4 shall serve on the claimant, and on any other contractor that has received the notice
5 of claim and on any supplier that has received a claim for contribution under sub. (8)
6 (a), a written response to the claim or claims that rejects the claim, offers to settle
7 the claim by monetary payment, the making of repairs, or a combination of both,
8 without inspection, or proposes to inspect the dwelling that is the subject of the claim.
9 If the contractor rejects the claim, the contractor shall state in the written response
10 to the claim the reason for rejecting the claim and include a comprehensive
11 description of all evidence the contractor knows or possesses, including expert
12 reports, that substantiates the reason for rejecting the claim. The contractor shall
13 also include in the written response to the claim any settlement offer received from
14 a supplier. *Insert 5-1811*

15 (c) If the contractor rejects the claim or does not respond to the claimant's notice
16 of claim within the time under par. (b), the claimant may bring an action against the
17 contractor for the claims described in the notice of claim without further notice.

5

(3) (c) (e) If a proposal for inspection is made under par. (b), the claimant shall, within
4 15 working days of receiving the contractor's proposal, provide the contractor and
5 any supplier on whom a contribution claim has been made and its agents, experts,
6 and consultants reasonable access to the dwelling to inspect the dwelling, document
7 any alleged construction defects, and perform any testing required to evaluate fully
8 the nature, extent, and cause of the claimed construction defects and the nature and
9 extent of any repairs or replacements that may be necessary to remedy them. If
10 destructive testing is required, the contractor shall give the claimant and all persons
11 on whom a notice of claim or contribution claim has been served advance notice of
12 the testing at least 5 working days before commencement of the testing and shall,
13 after completion of the testing, return the dwelling to its pre-testing condition ^{within} with
14 a reasonable time after completion of the testing, at the contractor's expense. If any
15 inspection or testing reveals a condition that requires additional testing to allow the
16 contractor to evaluate fully the nature, cause, and extent of the construction defect,
17 the contractor shall provide notice to the claimant and all persons on whom a notice
18 of claim or contribution claim has been served of the need for the additional testing,
19 and the claimant shall provide ^{reasonable} access ^{to the dwelling} under this paragraph. If a claim is asserted
20 on behalf of the owners of multiple dwellings, ~~or multiple owners of units within a~~
21 ~~multifamily complex,~~ then the contractor shall be entitled to inspect each of the
22 dwellings ~~or units~~. The claimant shall either provide a specific day for the inspection
23 upon reasonable notice for an inspection or require the contractor to request in
24 writing a ^{date for the inspection} day, at least 3 working days before the inspection.

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- (1) (d) (1) Within 10 working days following completion of the inspection and receipt
(2) of all testing results under par. (a), the contractor shall serve on the claimant ~~any of~~
(3) ~~the following:~~ a notice that includes any of the offers
or statements under par. (b) to
- 4 1. A written offer to remedy fully or partially the construction defect at no cost
5 to the claimant. The offer shall include a description of any additional construction
6 necessary to remedy the construction defect and a timetable for the completion of the
7 construction.
- 8 2. A written offer to settle the claim by monetary payment.
- 9 3. A written offer including a combination of repairs and monetary payment.
- 10 4. A written statement that the contractor will not proceed further to remedy
11 the construction defect, and shall state in the written response to the claim the
12 reason for rejecting the claim and include a comprehensive description of all evidence
13 the contractor knows or possesses, including expert reports, that substantiates the
14 reason for rejecting the claim. The contractor shall also include in the written
15 response to the claim any settlement offer received from a supplier.

7

- 18 (e) ~~(d)~~ If the claimant rejects a settlement offer made by the contractor, the
19 claimant shall ^{within 15 working days after receiving the offer, serve} ~~provide~~ written notice of the claimant's rejection to the contractor.
20 The notice shall include the reasons for the claimant's rejection of the contractor's
21 ~~proposal or~~ offer. If the claimant believes that the settlement offer omits reference
22 to any portion of the claim, or was unreasonable, the claimant shall in its written
23 notice ^{shall} include those items that the claimant believes were omitted and set forth the
24 reasons why the claimant believes the settlement offer is unreasonable. The

- 1 contractor shall forward the claimant's response to a supplier upon whom a
2 contribution claim has been made.

8

12 (f)(j) Upon receipt of a claimant's rejection and the reasons for the rejection, the
13 contractor shall, within 5 working days after receiving the rejection, make a
14 supplemental offer of repair or monetary payment to the claimant or ^{serve on} provide the
15 claimant written notice that no ^{additional} offer will be made.

16 (g)(k) If the claimant rejects the supplemental offer made by the contractor under
17 par. (f) to remedy the construction defect or to settle the claim by monetary payment
18 or a combination of each, the claimant shall serve written notice of the claimant's
19 rejection on the contractor within 15 working days after receipt of the supplemental
20 offer. The notice shall include the reasons for the claimant's rejection of the
21 contractor's supplemental settlement offer. If the claimant believes the contractor's
22 supplemental settlement offer is unreasonable, the claimant shall set forth in detail
23 all reasons why the claimant believes the supplemental settlement offer is
24 unreasonable. If the contractor declines to make a supplemental offer, or if the

1 claimant rejects the supplemental offer, the claimant may bring an action against
2 the contractor for the claim described in the notice of claim without further notice.

(9)

16 (h) (g) If a claimant accepts a ^{any} contractor's offer made under par. (f) within 15
17 working days after receipt of the offer, or if the offer is deemed accepted under par.
18 (m), ^{this subsection} and the contractor ^{or supplier} does not proceed to make the ^{agreed upon} monetary payment or remedy
19 the construction defect within the agreed ^{upon} timetable, the claimant may bring an
20 action against the contractor for the claim described in the notice of claim without
21 further notice. The claimant may ^{also} file the contractor's offer and claimant's
22 acceptance in the circuit court action, and the offer and acceptance creates ^a
23 rebuttable presumption that a binding and valid settlement agreement has been
24 created and should be enforced by the court.

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(i)

- 1 (2) (n) If a claimant accepts a contractor's offer to repair a construction defect
2 described in a notice of claim, the claimant shall provide the contractor and its
3 agents, experts, and consultants reasonable access to the dwelling to perform and
4 complete the construction by the timetable stated in the settlement offer.

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*or if the contractor does not respond
to the claimant's notice,*

(h) If a claimant receives a written statement that the contractor ~~will not~~
rejects the claim
~~proceed further to remedy the construction defect,~~ the claimant may bring an action
against the contractor for the claim described in the notice of claim without further
notice.

(i) If the claimant rejects the offer made by the contractor to remedy the
construction defect or to settle the claim by monetary payment or a combination of
each, the claimant shall serve written notice of the claimant's rejection on the
contractor within 15 working days after receipt of the offer. The notice shall include
the reasons for the claimant's rejection of the contractor's offer. If the claimant
believes the contractor's settlement offer is unreasonable, the claimant shall set
forth the reasons why the claimant believes the settlement offer is unreasonable.

(12)

(3) (K) (L) If a claimant rejects a reasonable offer or reasonable supplemental offer or fails to comply in good faith with the requirements under this subsection, or does not permit the contractor to repair the construction defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of the fair market value of the offer of settlement, or the actual cost of the repairs made, whichever is less, or the amount of a monetary offer of settlement. For purposes of this paragraph, the trier of fact shall determine the reasonableness of an offer of settlement. If the claimant has rejected a reasonable offer or reasonable supplemental offer or fails to comply in good faith with the requirements of this subsection, and any other law allows the claimant to recover punitive damages, costs, and attorney fees, then the claimant may not recover those punitive damages, costs, or attorney fees incurred after the date of its rejection. However, if the trier of fact determines that the contractor did not make a reasonable offer or supplemental offer or comply in good faith with the requirements of this subsection, the claimant may pursue claims under any other law that allows the claimant to recover punitive damages, costs, and attorney fees.

(m) A claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within 15 working days after receipt of the offer. If no response is served upon the contractor within the 15-working day period, then the offer shall be deemed rejected. If all requirements under this section have been fulfilled, and if the claimant has rejected any outstanding offers, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

13

14 (L) (a) If the claimant has served a contractor with a notice of claim relating to a
15 construction defect and the contractor has rejected or not responded to the claim and
16 the claimant knows that the contractor has not notified a supplier of the claim, the
17 claimant shall, before filing an action against the supplier for a construction defect,
18 serve the supplier with a copy of the notice of claims. (insert 10-18)

(14)

15

1 comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before filing an action
2 against a supplier seeking contribution for a claim that a claimant has served on a
3 contractor, the contractor shall serve the supplier with a ^{notice of} contribution claim under
4 sub. (8). If the contractor files an action against a supplier but fails to serve the notice
5 of claim from the claimant, the circuit court shall stay the action until the contractor
6 has complied with the requirements of this subsection and sub. (8).

7 (4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any
8 contractor or supplier warranty terms pertaining to products or services supplied for
9 the dwelling.

10 (5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.
11 A construction defect that is discovered after an initial claim or contribution claim
12 notice has been provided may not be alleged in an action until the claimant or
13 contractor has given the contractor or supplier ^{that} who performed the original
14 construction work or provided supplies written notice of the new claim or
15 contribution claim regarding the alleged new construction defect based on the
16 claimant's or contractor's most current records. The contractor or supplier shall have
17 an opportunity to resolve the notice of the new claim or contribution claim in the
18 manner provided in subs. (2) and (8).

19 (6) RELEASE. If a claimant or contractor accepts an offer made in compliance
20 with this section and the contractor or supplier fulfills the offer in compliance with
21 this section, an action brought by the claimant or contractor for the claim described
22 in the notice of claim shall be dismissed with prejudice.

23 (6) (7) ACTION OF ASSOCIATIONS. (a) In this subsection, "association" means a
24 homeowner's association, condominium association under s. 703.02 (1m), unit
25 owner's association, or a nonprofit corporation created to own and operate portions

(16)

1 of a planned community that may assess unit owners for the costs incurred in the
2 performance of the association's obligations.

3 (b) A person may not provide or offer to provide anything of value, directly or
4 indirectly, to a property manager of an association or to a member or officer of an
5 association to induce the property manager, member, or officer to encourage the
6 association to file or discourage the association from filing a claim for damages
7 arising from a construction defect.

8 (c) A property manager retained by an association or a member or officer of an
9 association may not accept anything of value, directly or indirectly, in exchange for
10 encouraging to file or discouraging from filing a claim for damages on behalf of the
11 association arising from a construction defect.

12 (d) A person who knowingly violates par. (b) or (c) may be fined not more than
13 \$500 or imprisoned not more than 30 days, or both.

14 (e) An association may bring an action against a contractor or supplier to
15 recover damages that result from construction defects in any of the common
16 elements or limited common elements of a condominium, as defined in s. 703.02 (2)
17 and (10) or to the extent it has standing to sue on behalf of its members.

18 (7) (8) CONTRIBUTION. (a) A contractor may not seek contribution from a supplier
19 for a claim that a claimant makes against the contractor unless the contractor
20 provides the supplier with a written notice of the claimant's claim and the
21 contribution claim within 5 working days after the contractor's receipt of the claim,
22 except that a contractor may make a contribution claim later than 5 days after the
23 contractor's receipt of the initial claim *if done any of the following*
24 action to repair the defect *has not performed destructive testing, has not authorized*
25 the claimant to take any action to repair the defect *has not otherwise interfered with*

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- ① or altered the property that is the subject of the claim, and has not in any other way
② taken steps that would preclude a supplier's ability to offer to remedy the defect by
3 making repairs. (Insert (13-3) ✓

- ④ (b) Within 15 working days after a supplier has received notice that a contractor

- 5 is seeking contribution under par. (a), the supplier shall serve the contractor with a

- 6 written response that rejects the contribution claim, offers to settle the contribution

- 7 claim by payment, by repair, or by both payment and repair without inspection, or

- 8 offers to inspect the dwelling that is the subject of the contribution claim. If the

- 9 supplier rejects the contribution claim, the supplier shall state in the written

- 10 response to the claim the reason for rejecting the claim and include a comprehensive

- 11 description of all evidence the supplier knows or possesses, including expert reports,

- 12 that substantiates the reason for rejecting the claim. The contractor shall forward

- 13 the supplier's response to the claimant. The supplier and contractor shall use their

- 14 best efforts to coordinate their responses to claims and contribution claims.

17

22 (d) If a supplier proposes to inspect the dwelling that is the subject of the
23 contribution claim, the contractor and claimant shall, within 15 working days after
24 receiving the supplier's proposal, provide the supplier and its agents, experts, and
25 consultants reasonable access to the dwelling to inspect the dwelling, document any

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1 alleged construction defects, and perform any testing required to evaluate fully the
2 nature, extent, and cause of the claimed construction defects and the nature and
3 extent of any repairs or replacements that may be necessary to remedy them. If
4 destructive testing is required, the supplier shall give the contractor and claimant
5 and all persons on whom a notice of claim or contribution claim has been served
6 advance notice of the testing at least 5 working days before commencement of the
7 testing and shall, after completion of the testing, return the dwelling to its
8 pre-testing condition within a reasonable time after completion of the testing, at the
9 supplier's expense. If any inspection or testing reveals a condition that requires
10 additional testing to allow the supplier to evaluate fully the nature, cause, and extent
11 of the construction defect, the supplier shall provide notice to the contractor and
12 claimant and all persons on whom a notice of claim or contribution claim has been
13 served of the need for the additional testing and the contractor and claimant shall
14 provide ^{reasonable access} ~~access under this paragraph~~ If a claim is asserted on behalf of the contractor
15 ^{to the dwelling} of multiple dwellings, or multiple owners of units within a multifamily complex, then
16 the supplier shall be entitled to inspect each of the dwellings ~~or units~~. The contractor
17 and claimant shall provide a specific day for the inspection upon reasonable notice
18 for an inspection or require the supplier to request in writing a ^{date for the inspection} day, at least 3 working
19 days before the inspection.

20 ~~(e)~~ (e) Within 10 working days following completion of the inspection and receipt
21 of all testing results under par. (d), the supplier shall serve on the contractor any of

22 the following:

23 1. A written offer to remedy fully or partially the construction defect at no cost
24 to the contractor. The offer shall include a description of any additional construction

15 (g) (e) If the contractor rejects a settlement offer made by the supplier, the
16 contractor shall provide written notice of the contractor's rejection to the supplier.

17 The notice shall include the reasons for the contractor's rejection of the supplier's

18 proposal or offer. If the contractor believes that the settlement offer omits reference

19 to any portion of the claim, or was unreasonable, the contractor shall in its written

20 notice include those items that the contractor believes were omitted and set forth the

21 reasons why the contractor believes the settlement offer is unreasonable.

23 ~~(h)~~ (i) Upon receipt of a contractor's rejection and the reasons for the rejection, the
24 supplier shall, within ⁵10 working days of receiving the rejection, make a
25 supplemental offer of repair or monetary payment to the contractor.

*or serve on the contractor written
notice that no additional offer will
be made*

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1 ~~(h)~~ (i) If the contractor rejects the supplemental offer made by the supplier to
2 remedy the construction defect or to settle the claim by monetary payment or a
3 combination of each, the contractor shall ^{within 15 working days after receiving the offer,} serve written notice of the contractor's
4 rejection on the supplier. The notice shall include the reasons for the contractor's
5 rejection of the supplier's supplemental settlement offer. If the contractor believes
6 the supplier's supplemental settlement offer is unreasonable, the contractor shall set
7 forth the reasons why the contractor believes the supplemental settlement offer is
8 unreasonable. *(insert 16-8)✓*

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1 necessary to remedy the construction defect and an anticipated timetable for the
2 completion of the construction.

3 2. A written offer to settle the claim by monetary payment.

4 3. A written offer including a combination of repairs and monetary payment.

5 4. A written statement that the supplier will not proceed further to remedy the
6 construction defect.

7 (f) If a contractor accepts a supplier's offer made under ^{any} par. (e) within 15
8 working days after receipt of the offer, and the supplier does not proceed to make the
9 monetary payment or remedy the construction defect within the agreed ^{upon} timetable,
10 the contractor may bring an action against the supplier for the claim described in the
11 notice of claim without further notice. *(insert 15-11) ✓*

12 (g) If a contractor receives a written statement that the supplier will not
13 proceed further to remedy the construction defect, the contractor may bring an action
14 against the supplier for the claim described in the notice of claim without further
15 notice.

16 (h) If the contractor rejects the offer made by the supplier to remedy the
17 construction defect or to settle the claim by monetary payment or a combination of
18 each, the contractor shall serve written notice of the contractor's rejection on the
19 supplier. The notice shall include the reasons for the contractors rejection of the
20 supplier's offer. If the contractor believes the supplier's settlement offer is
21 unreasonable, the contractor shall set forth the reasons why the claimant believes
22 the settlement offer is unreasonable.

24 (W) (m) If a contractor accepts a supplier's offer to repair a construction defect
25 ^{when appropriate and the claimant} described in a notice of claim, the contractor shall provide the supplier and its agents,

1 experts, and consultants reasonable access to the dwelling to perform and complete
2 the construction by the timetable stated in the settlement offer.

9 (k) If a contractor rejects a reasonable offer, including any reasonable
10 ^(L) supplemental offer, made as provided under this subsection or does not permit the
11 supplier to repair the construction defect pursuant to an accepted offer of settlement,
12 the contractor may not recover an amount in excess of the fair market value of the
13 ~~offer of settlement~~, or the actual cost of the repairs made, whichever is less, or the
14 amount of a monetary offer of settlement. For purposes of this paragraph, the trier
15 of fact shall determine the reasonableness of an offer of settlement. If the contractor
16 has rejected a reasonable offer, including any reasonable supplemental offer, and any
17 other law allows the contractor to recover ^{punitive damages} costs and attorney fees, then the contractor
18 ^{not these punitive damages, or any} may recover ~~no~~ costs or attorney fees incurred after the date of its rejection. ^(insert 16-18)

19 (L) A contractor accepting the offer of the supplier to remedy a construction
20 defect shall do so by serving the supplier with a written notice of acceptance within
21 a reasonable period of time after receipt of the supplier's settlement offer, but no later
22 than 15 working days after receipt of the offer. If no response is served upon the
23 supplier within the 15-working day period, then the offer shall be deemed rejected.

- (A) 3 ~~(m)~~ (n) A contractor who is seeking contribution from a supplier and who elects to
4 inspect a dwelling under sub. (2) (b) shall ^{serve} ~~send to~~ the supplier written notice ^{by} ~~by~~
(m) 5 ~~certified mail~~ of the inspection date and dwelling address, and whether ^{destructive} ~~destruction~~
6 testing is contemplated, at least 5 working days before the inspection. ✓

→ insert 17-6 ← ✓
(sub (8))

24

CS LIMITATION PERIOD

- 5 (9) (a) If, during the pendency of the notice, inspection, offer, acceptance, or repair
6 process, an applicable limitation period would otherwise expire, the limitation
7 period is tolled pending completion of the notice of claim process described in this
8 section. This ^{sub section} paragraph shall not be construed to revive a limitation period that has
9 expired before the date on which a claimant's written notice of claim is served or
10 extend any applicable statute of repose.
- 11 (10) (p) After the ^{Service} sending of the initial notice of claim and initial contribution claim,
12 a claimant, a contractor, and a supplier may, by written mutual agreement, alter the
13 procedure for the notice of claim process described in this section.

CS ALTERATION OF PROCEDURE

7 ~~(9)~~ APPLICATION TO OTHERS. This section does not apply to a contractor's or
8 ⁽¹¹⁾ ~~(8)~~ supplier's right to seek contribution, indemnity, or recovery against any party other
9 than a supplier for a claim made against a contractor or supplier.

10 ⁽¹²⁾ ~~(10)~~ HOMEOWNER REPAIRS. Without giving notice under this section, a
11 ~~(8)~~ homeowner may make immediate repairs to a dwelling to protect the health or safety
12 of its occupants.

13 ⁽¹³⁾ ~~(11)~~ ^{(5) BROCHURE} The department of commerce shall prepare a brochure explaining the
14 ~~(8)~~ process under this section and shall provide that brochure to contractors.

15 **SECTION ~~3~~ Initial applicability.**

16 (1) This act first applies to actions commenced on the effective date of this
17 subsection.

18 **SECTION ~~4~~ Effective date.**

19 (1) This act takes effect on the first day of the 6th month beginning after
20 publication.

21 (END)

Insert 17/16

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2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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giving *insert and*
substitute amendment *or door*
Analysis by the Legislative Reference Bureau

Substitute amendment
This bill requires contractors ^{that} who contract to construct or remodel a person's residence to provide the dwelling's owner a brochure explaining the procedures created in this bill and written notice that he or she must follow those procedures before suing a contractor or ~~door or~~ window supplier. Under the bill, if ^a the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The bill requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

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After the contractor receives the notice, the bill gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the bill, if the claim is rejected at this point, or if the contractor fails to timely respond to the claim, the owner can start a court action against the contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection and any known legal reasons for the rejection. The bill requires the owner to allow the contractor reasonable access to the ~~home~~ ^{dwelling} if the contractor wants to inspect the alleged construction defect. After inspection, the bill allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the bill allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as ~~he or she responded to an~~ ^{for the} original offer.

Substitute amendment
If the property is inspected and requires some destructive testing, the bill requires the contractor to return the dwelling to ~~the~~ ^{its} condition before the inspection ~~after finishing the inspection and testing~~. If the owner of a dwelling agrees to a contractor's settlement offer and the contractor does not follow through as agreed, the bill allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

Substitute amendment
Under the bill, if a owner of a dwelling rejects a reasonable settlement offer or does not permit the contractor to repair the defect under an agreed settlement offer, the owner's damages are limited to the fair market value of the ~~offer of settlement~~ ^{or the actual} costs of the repairs, ~~whichever is less~~, or the amount of the monetary offer of settlement, and the owner may not recover punitive damages, costs, or attorney fees incurred after the rejection.

The bill allows ^{an} a owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety. *fails*

If the dwelling owner begins a court action but ~~failed~~ ^{fails} to follow the procedures, and the contractor had ~~provided~~ ^{provided} the owner with the proper notice and brochure, under the bill the court must dismiss the action without prejudice. If the dwelling

Substitute amendment

owner begins a court action but failed^s to follow the procedures, and the contractor ~~did~~^{does} not provide the owner with the proper notice and brochure, under the ~~bill~~^s the court stays the action and orders the parties to comply with the ~~bill's~~^s provisions.

Under the ~~bill~~^s, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the ~~bill~~^s similar to those that apply to the contractor and owner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The ~~bill~~^s requires the Department of Commerce to prepare a draft of a brochure that explains the process in this ~~bill~~^s and ^{to} provide that draft to contractors.

Contractors are required to give a copy of the brochure to the owner of a dwelling if ~~they~~^{the} contract to construct or remodel a dwelling.

Substitute
amendment

the
Contractor
and
owner

Substitute
amendment's

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0466/1ins
RPN:kjf&wlj:pg

1 insert 4-16:

2 ^{Not} Before initiating an action against a contractor or supplier, a claimant shall
3 provide the contractor or supplier with the opportunity to respond to the claim and
4 repair the construction defect under this section. ✓

5

6 insert 5-14:

7 ^{Not} any of the following:

8 1. A written offer to remedy fully or partially the construction defect at no cost
9 to the claimant. The offer shall include a description of any additional construction
10 necessary to remedy the construction defect and a timetable for the completion of the
11 construction.

12 2. A written offer to settle the claim by monetary payment.

13 3. A written offer including a combination of repairs and monetary payment.

14 4. A written statement that the contractor rejects the claim, and ^{the contractor} shall state in
15 the written response to the claim the reason for rejecting the claim and include a
16 comprehensive description of all evidence the contractor knows or possesses,
17 including expert reports, that substantiates the reason for rejecting the claim. ✓ The
18 contractor shall also include in the written response to the claim any settlement offer
19 received from a supplier.

20 5. A proposal for the inspection of the dwelling under par. (c). ✓

21

22 insert 10-18:

1 (No ff) and provide the supplier with the opportunity to respond to the claim and repair
2 the construction defect in the same manner as provided a contractor under this
3 subsection.

4
5 insert 13-3:

6 (b) The contractor shall include in the notice of claim a description of the alleged
7 construction defect and include a comprehensive description of all evidence that the
8 contractor knows or possesses, including expert reports, that substantiates the
9 nature and cause of the alleged construction defect.

10
11 insert 13-5:

12 (No ff) any of the following:

13 1. A written offer to remedy fully or partially the construction defect at no cost
14 to the claimant. The offer shall include a description of any additional construction
15 necessary to remedy the construction defect and a timetable for the completion of the
16 construction.

17 2. A written offer to settle the claim by monetary payment.

18 3. A written offer including a combination of repairs and monetary payment.

19 (19) 4. A written statement that the supplier rejects the claim, and ^{the supplier} shall state in the
20 written response to the claim the reason for rejecting the claim and include a
21 comprehensive description of all evidence the supplier knows or possesses, including
22 expert reports, that substantiates the reason for rejecting the claim.

23 5. A proposal for the inspection of the dwelling, following the procedures under
24 par. (e).
25

out of
order
in draft

1

2 insert 15-11:

3 ~~No ff~~ The contractor may also file the supplier's offer and contractor's acceptance in
4 the circuit court action, and the offer and acceptance creates a rebuttable
5 presumption that a binding and valid settlement agreement has been created and
6 should be enforced by the court.

7

8 insert 16-8:

9 ~~No ff~~ ^{the} If supplier declines to make a supplemental offer, or if the contractor rejects the
10 supplemental offer, the contractor may bring an action against the supplier for the
11 claim described in the notice of claim without further notice.

12

13 insert 16-18:

14 ~~No ff~~ However, if the trier of fact determines that the supplier did not make a
15 reasonable offer or supplemental offer or comply in good faith with the requirements
16 of this subsection, the contractor may pursue claims under any other law that allows
17 the contractor to recover punitive damages, costs, and attorney fees.

18

19 Insert 17-6:

20 ^{CS FAILURE TO RESPOND TO NOTICE}
(8) If a person fails to respond to any notice served under this section, then any
21 offer made in that notice is rejected.

22



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e-mail to... (per RPN)

Barman, Mike

From: Barman, Mike
Sent: Wednesday, January 25, 2006 2:40 PM
To: 'Brad Boycks'
Subject: RE: LRB 05s0466 Topic: Right to cure dwelling defect

LRB 05s0466 is still a "/1" ... to this point no changes have been made to this draft. You will have to check with the requestor's office or the LRB drafter (Robert Nelson 267-7511) to see if any changes are in the works. Thanks

Mike Barman (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

1 East Main Street, Suite 200

Madison, WI 53703

(608) 266-3561 / mike.barman@legis.state.wi.us

From: Brad Boycks [<mailto:bboycks@wisbuild.org>]
Sent: Wednesday, January 25, 2006 2:38 PM
To: Barman, Mike
Subject: RE: LRB 05s0466 Topic: Right to cure dwelling defect

Is this the latest revision (amendment) to SB 448?

Brad Boycks
Director of Political Affairs
Wisconsin Builders Association
W: 608-242-5151
C: 608-692-5157

-----Original Message-----

From: Barman, Mike [<mailto:Mike.Barman@legis.state.wi.us>]
Sent: Wednesday, January 25, 2006 9:53 AM
To: Brad Boycks
Subject: LRB 05s0466 Topic: Right to cure dwelling defect

Draft Requester: Luther Olsen

The attached proposal has been jacketed for introduction.

01/25/2006